

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH BENEFITS FUND; PIRELLI ARMSTRONG RETIREE MEDICAL BENEFITS TRUST; TEAMSTERS HEALTH & WELFARE FUND OF PHILADELPHIA AND VICINITY; PHILADELPHIA FEDERATION OF TEACHERS HEALTH AND WELFARE FUND; DISTRICT COUNCIL 37, AFSCME - HEALTH & SECURITY PLAN; JUNE SWAN; BERNARD GORTER; SHELLY CAMPBELL and CONSTANCE JORDAN,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri corporation, and McKESSON CORPORATION, a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DECLARATION OF LORI A. SCHECHTER IN SUPPORT OF MCKESSON CORPORATION'S REPLY TO PLAINTIFFS' NOVEMBER 28, 2007 SUBMISSIONS REGARDING CLASS CERTIFICATION ISSUES**

I, Lori A. Schechter, declare as follows:

1. I am a partner of the law firm of Morrison & Foerster and one of the attorneys of record for McKesson Corporation ("McKesson") in this action. I submit this declaration in support of McKesson Corporation's Reply to Plaintiffs' November 28, 2007 Submissions Regarding Class Certification Issues.

2. Attached hereto is a true and correct copy of the following exhibit:

Exhibit No.	Description
1	Excerpts of Raymond Hartman's October 4, 2006 deposition

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13th day of December, 2007, in San Francisco, California.

By: /s/ Lori A. Schechter  
Lori A. Schechter

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on December 13, 2007.

/s/Lori A. Schechter  
Lori A. Schechter

# Exhibit 1

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1 RAYMOND S. HARTMAN

2 UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF MASSACHUSETTS

4  **ORIGINAL**

5 -----x  
6 NEW ENGLAND CARPENTERS HEALTH

7 BENEFITS FUND, ET AL.,

8 Plaintiffs

9 Civil Action

10 vs. No. 1:05-CV-11148-PBS

11  
12 FIRST DATABANK, INC., and

13 McKESSON CORPORATION,

14 Defendants

15 -----x

16 DEPOSITION OF RAYMOND S. HARTMAN, a

17 witness called by and on behalf of the  
18 Defendant McKesson Corporation, taken pursuant  
19 Federal Rules of Civil Procedure, before  
20 Nicole E. Guilbert, a Notary Public in and for  
21 the Commonwealth of Massachusetts, at Bonner,  
22 Kiernan, Trebach & Crociata, on Wednesday,  
23 October 4, 2006, commencing at 9:46 a.m.

24  
25 VOLUME I

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2 negotiations with their retail pharmacy network members; am  
3 I right?

4 A. You are right.

5 Q. And I'm asking whether there's any -- that has any  
6 bearing on what turns out to be the discount negotiated  
7 between the PBM and the TPP?

8 A. They are -- the PBM, in those negotiations, is  
9 certainly interested in if they are -- if the  
10 reimbursements to them reflect a discount such that they're  
11 losing money when they turn around and the payments go to  
12 the retailer, they're going to be interested in the  
13 discounts offered to retail pharmacies versus what they're  
14 -- what is being paid to the pharmacies under the contracts  
15 with the retail network.

16 Q. Is there any correlation between what we find to  
17 be the discounts in the contracts between the PBMs and the  
18 retailers on the one hand, and what we find them to be  
19 between the PBM and the third-party payor on the other?

20 A. By a correlation, what a statistician would say is  
21 I take -- actually, a correlation wouldn't even work.

22 Q. Is there a 2 percent -- as the judge referred to a  
23 2 percent general difference between the two?

24 A. There are differences, yeah. I mean there are  
25 differences, yeah, and I don't -- that's not quite a

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2 correlation but, yes, on average there are going to be  
3 differences between the reimbursements that are paid under  
4 the discounts paid to the PBMs from third-party payors and  
5 what is paid to the retailer.

6 Q. Well, in other words, what the PBM receives from  
7 -- pays to the retailer by way of reimbursement --

8 A. Mm-hmm.

9 Q. -- versus what it receives from the third-party  
10 payor, that differential is sometimes referred to as a  
11 spread or profit achieved by the PBM in conducting its  
12 business, correct?

13 A. That's a profit center for a PBM, that's correct.

14 Q. Now, my question is, having that in mind, in the  
15 negotiations that occur between the third-party payor and  
16 the PBM, is the -- the discounts that the PBM has or has  
17 achieved with its retail network a factor that bears upon  
18 its negotiation of that discount with the third-party  
19 payor?

20 A. Are you saying to me does each -- does each third  
21 party -- does PBMs negotiating with third-party payor A --

22 Q. No. I'm asking, generally, the cost structure for  
23 the PBM is it has to pay its network a certain amount of  
24 money based upon negotiated discounts?

25 A. Mm-hmm.

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2 Q. And I'm taking that collectively and I'm asking  
3 does that have a bearing upon what a PBM is seeking by way  
4 of discount in its negotiation with a third-party payor?

5 A. Well, what you will see is, just as you've said,  
6 there's a range of discounts off of an AWP that all of  
7 these participants refer to in their negotiations; and  
8 there's a range of reimbursements that we've recognized and  
9 the judge has recognized and Dr. Berndt has recognized and  
10 Mr. Young has recognized that is the range of the discounts  
11 off of AWP that third-party payors pay or are able to  
12 negotiate. What gets paid to the retailers, as some  
13 deponents like, say, Nancy Roland of -- I can't remember  
14 the third-party payor for which she was a deponent in the  
15 MDL matter -- but there's going to be a range of payments  
16 to the -- to the retailers such that they -- they're able  
17 to make a certain amount of profit and the PBM will profit  
18 from the difference between what they paid -- what gets  
19 paid to the retailers.

20 So there will be a spread that will be a little  
21 different for the retailer such that the PBM can earn a  
22 profit on that, all of which -- all of these discounts, the  
23 retailer side, the TPP side, are negotiated off of an AWP.  
24 All of these kinds of negotiations are taken as given to  
25 what has been alleged in this matter, which is directed at

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2 the anchor around which these negotiations take place.

3 Q. I guess I'm -- it's my fault I'm not being clear  
4 enough. What the PBM has to reimburse its network is a  
5 cost to the PBM, correct?

6 A. That's correct.

7 Q. Does that -- is that taken into account by the PBM  
8 when it negotiates the discount with the third-party payor?

9 A. For the PBM to stay in business, it has to make  
10 money. It can't earn less --

11 Q. Sounds like I got a yes there?

12 A. Well, it has to -- yeah. It has to take that into  
13 account, that's right.

14 Q. So if the PBM is able to decrease the discounts,  
15 in other words, reimburse less to the retailer PBM, okay,  
16 will it take that into account when it's negotiating with  
17 the third-party payor? It's now less than it was before,  
18 will that be a factor in the willingness of the PBM to  
19 adjust the discount it has with the TPP -- with the TPP  
20 rather? Let me state it different. I'll strike that.

21 If the cost to the PBM goes down in terms of what  
22 it has to pay its retailers, will that affect what the PBM  
23 is willing to accept in its -- in the discount it  
24 negotiates with a third-party payor?

25 A. We're speaking -- we're speaking broadly now --

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2 Q. Yeah, broadly.

3 A. -- outside of the context of this matter?

4 Q. Correct. That's right.

5 A. And just the general business practices of this  
6 industry?

7 Q. Yeah.

8 A. And we have a PBM who's negotiating with retailers  
9 and with third-party payors, and if the costs -- if their  
10 costs go down, they have -- they'd like to keep their  
11 revenues at what they were, so they're making more money,  
12 but they may have more -- they might be able to negotiate  
13 more aggressively versus another PBM, if we're talking  
14 about a single PBM here, or the costs will among -- you  
15 know, PBMs are providing data processing, a whole variety  
16 of -- of costs and are making money from a whole variety of  
17 sources.

18 So this is just one of many costs, but it will  
19 enter into the negotiation.

20 Q. And why -- and is it partly because they do  
21 compete with -- forget intense -- it's because they compete  
22 with other PBMs for the business of TPPs?

23 A. A given PBM, the -- there are -- there is enough  
24 competition among PBMs such that a PBM cannot go out and  
25 just impose whatever it wants in terms of its terms and

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2 negotiation. It has to have an eye toward other players in  
3 the market. Whether this gets negotiated and competed to  
4 razor thin margins as, say, the wholesaler competition has  
5 been argued to be, is -- that's a different matter but  
6 there is -- there will be a concern for those costs.

7 Q. All right. Now I want to focus on the 13 to 18  
8 percent range that we talked about this morning and we  
9 talked about where you derived it from Young's declaration  
10 and from Judge Saris's opinion were two places you looked,  
11 correct?

12 A. Well, I didn't look there. That corroborated what  
13 I found throughout industry sources, discovery materials  
14 that I've seen from PBMs as they're giving presentations to  
15 third-party payors to try and -- to sell their services.  
16 I've -- I saw that on my own and came to that conclusion on  
17 my own. It was confirmed, as I think I mentioned in the  
18 footnote here, what -- what was put forward by Mr. Young  
19 and Judge Saris and Mr. -- Dr. Berndt; it corroborated what  
20 I'd seen on my own.

21 Q. Now, in your calculations, we looked at pages 11  
22 and 12 of your declaration. You saw that you used 15  
23 percent, and it struck me that 15 percent was halfway  
24 between 13 and 18, and I want to see if that's why you used  
25 15?

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2 mean I'd have to think more about it.

3 Q. Would the T -- would the third-party payor's  
4 projection of what it's going to cost in the future have a  
5 bearing on its renegotiation of a different discount?

6 A. I've not studied the negotiations closely enough  
7 to say how much that would have an affect, and it hasn't  
8 been relevant to what I've had to address here.

9 Q. Now, you've mentioned a range of 13 to 18 percent.  
10 Is that something third-party payors are aware of, that  
11 there's a range?

12 A. I would assume that this is something that --

13 Q. It's not a secret?

14 A. Well, it's -- there's two things: One, as one  
15 looks at depositions and one -- of third-party payors that  
16 negotiate contracts or administer reimbursement, some of  
17 them really have little idea of really what's -- what the  
18 state of affairs is and what the state of play is. It's  
19 not a secret. People can read this but a lot of them  
20 don't, and that's part of the inertia in this --

21 Q. A lot don't but some do?

22 A. Some would.

23 Q. What accounts for the fact that some people get a  
24 13 percent discount and some got an 18 percent discount?

25 A. All of the factors that would account for that are

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2 orthogonal to and are relevant to what I'm focussing on  
3 here.

4 Q. Would it bear -- would it be explainable, at least  
5 in part, by the respect of negotiating positions of the  
6 third-party payor and the PBM?

7 A. That would be a factor.

8 Q. You were beginning to tell me a little while ago  
9 about the number of members and so forth, that the larger  
10 of the third-party payor, the more leverage it may have,  
11 correct?

12 A. That's correct.

13 Q. More leverage to adapt a more favorable discount  
14 than a smaller -- the smaller third-party payor, correct?

15 A. Well, let me put it this way --

16 Q. If you answer my question, then you can go and say  
17 all the rest you want.

18 A. Well, I'm going to answer your question and that  
19 is that given an AWP that these -- these groups are  
20 negotiating off of, then if I'm a -- if I'm a large -- if  
21 I'm Cigna and I come to the table and I want to negotiate  
22 with a -- and maybe Cigna already has a PBM, so let's just  
23 -- let's just keep it nonspecific. We've got a large  
24 insurer, one of the largest numbers of insured lives. They  
25 come to a PBM. They say we're bringing all these insured

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2 lives.

3 They will prob -- and they'll say, okay, well, I  
4 want, you know, I want 17 percent, 18 percent off of AWP.  
5 They will have the leverage to move in that direction  
6 rather than the PBM will have a more difficult time saying,  
7 oh, no. We're only going to give you 13 percent. Go walk  
8 and see if you can get a better deal somewhere else.

9 Now, again, that's -- those are negotiations and  
10 they take place with TPPs but they're all off of the same  
11 AW -- that's irrelevant to the impact of what we're talking  
12 about here, because what we're talking about here is the  
13 AWP from whence all of that -- that occurs and that  
14 variation is -- is irrelevant to what we're dealing with  
15 here.

16 Q. Now I want to deal with the "R" word, rebates, and  
17 I want to ask you what do the contracts typically provide  
18 between the third-party payor and the PBM regarding rebates  
19 received by the manufacturer during the class period?  
20 What's a typical provision?

21 A. The -- I couldn't tell you what a typical  
22 provision is. I can tell you what general categories of  
23 rebates there are.

24 Q. No. Just what typically is provided, do they all  
25 provide the pass-throughs of the rebates, pass for some of

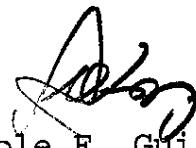
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2 COMMONWEALTH OF MASSACHUSETTS MIDDLESEX, SS.  
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4 I, NICOLE E. GUILBERT, a Certified  
5 Shorthand Reporter and Notary Public duly  
6 commissioned and qualified in and for the  
7 Commonwealth of Massachusetts, do hereby  
8 certify that there came before me on the 4th  
9 day of October, 2006, at 9:46 a.m., the person  
10 hereinbefore named, RAYMOND S. HARTMAN, who  
11 provided satisfactory evidence of  
12 identification as prescribed by Executive  
13 Order 455 (03-13) issued by the Governor of  
the Commonwealth of Massachusetts, was by me  
duly sworn to testify to the truth and nothing  
but the truth of his knowledge concerning the  
matters in controversy in this cause; that he  
was thereupon examined upon his oath, and his  
examination reduced to typewriting under my  
direction; and that this is a true record of  
the testimony given by the witness to the best  
of my ability.

14 I further certify that I am neither  
attorney or counsel for, nor related to or  
employed by, any of the parties to the action  
in which this deposition is taken, and  
further, that I am not a relative or employee  
of any attorney or counsel employed by the  
parties hereto or financially interested in  
the action.

15  
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18 My Commission Expires: May 7, 2010

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Nicole E. Guilbert  
CSR/Notary Public